1955 **File No.** S Kanara 8/55

K

Legal DEPARTMENT

Examined E BRANCH

Subject:— Suits. Kanara.

Institution of a suit against—
shri Ganapa Bhatta Subba Bhatta
for recovery of Rs. 1772/- with interest—
and costs.

P.28
C

File No. S. Kanara 8/55

Std. Scott Slip 24-B

8/55

Letter.

To

The Assistant Director of Civil Supplies
(Districts), Bombay.

No.139. Karwar, 28-1-1953.

Subject:-Shortage of foodgrains in Herur godown
Recovery of

Reference:-Your letter No.947/12554/II-C,
dated 26-9-1952.

All particulars required under Rule 108 of the Law Officers' Rules are furnished here below for obtaining Government sanction to file a Civil Suit against Shri Ganapa Bhatta Subba Bhatta, Ex- G.K., Herur.

a) Shri Ganapa Bhatta Subba Bhatta was the Patel of Herur, who was appointed as Godown Keeper when levy system was introduced. He was put in charge of three Government Godowns located in Herur in or about 1944-45. The godown register maintained by him showed that he has received 1300 bags of rice between 23-2-1945 and 18-10-45. It is asserted that each bag contained 128 seers of rice. As Godwon Keeper, he was to issue the stock on permits to the Fair Price shop Heroor of which he was himself the Chairman. His son helped him in running the Fair Price shop. In July 1945, it was found that the stock has been mismanaged and there were shortages. Hence the stock was actually measured. At the time of actual measurement, the stock as shown in the stock register maintained by the Godown Keeper, ought to have been 415 bags and 64 seers. But when actually measured, it was found to be 367 bags and 62 seers. Therefore the shortage was 48 bags and 2 seers. The stock of rice in the godown was unclean. So it was not cleaned. After cleaning a further shortage of 37 bags and 85 seers was noticed. Hence the total shortage found in the stock was 85 bag and 87 seers.

This godown Keeper was prosecuted along with his son who was accused No. 2 and the Asst. Godown Keeper who was accused No.3, under Section 406 I.P.C. read with

with Section 34 and breach of Rule No.81 (4) of Defence of India Rules read with Section 7 of Act XXIV of 1946. The Godown Keeper and the Assistant Godown Keeper were convicted by the Magistrate on 27-8-1947; but in Criminal Appeal No. 36 of 1947, the Sessions Judge acquitted both the accused on the ground that there was no evidence to show that each bag of rice did contain 128 seers. The bags may be of uniform capacity but unless each bag was weighed and taken delivery, it was held that there was no evidence justifying conviction. The Circle Inspector who was examined at Ex. No.2, had deposed that delivery used to be given without weighing. The evidence of Ex. No.4 a clerk in Taluka Office was to the same effect. But it has to be noted that this Godown Keeper Shri Ganapa Bhatta is a man of experience who knew that each bag ought to contain 128 seers. It was his duty to get the stock properly weighed or measured, if he had any doubt. The very stock register maintained by him gives credit for 1300 bags and in a Civil Court the burden will shift on him to prove that there was no shortage. Therefore the decision in the Sessions Court may not affect the Civil proceedings.

It is for the Godown Keeper to prove how the shortage took place. Until then he will be liable in a Civil Court. For each consignment he had passed the receipt on invoice which clearly mentioned that each bag contained 128 seers. Shri Ganapa Bhatta received the consignments and acknowledged the receipt as "received in tact" The capacity of each bag is well known and an experienced had can easily note the shortage if the bag is not completely filled up. The shortage in each bag was 3 - 4 paylees which could be easily observed and would attract the notice of any person handling such stock. The capacity of each bag is 32 paylees. If the shortage is to the extent of 3-4- paylees the empty and hollow space to the extent of 1/8th of the bag could easily have been observed. Shortage of 48

Shortage of 48 bags and 2 seers in 425 bags would give this minimum average shortage. But in the Criminal Appeal the Sessions Judge held that there was no evidence to prove such shortage in each bag. If as per Session Court Judgement there was evidence wanting about 1/8 bag shortage in each bag the case becomes worst for the Godwon Keeper. In that case the shortage in other bags would be greater and there will be greater reason to attract notice of any one bag for greater shortages.

It is also important to note that this Godown Keeper was himself the Chairman of the Fair Price shop and was helped by his son who was accused No.2 and his assistant who was accused No.3. As Godown Keeper he used to sell rice bags to the Fair Price shop. If there was any actual deficit, when taking delivery of the bags his assistant or his son would have reported the matter immediately. The question is not as to whether the Fair Price shop measured each bag. But when they effected the sale of those bags, they would have detected the shortages to the extent of 3-4 paylees in each bag, and they would have reported the matter to the Taluka office.

On the other hand the fact that this Godwon Keeper was himslef the Chairman of a Fair Price shop goes to show that he had full opportunity to sell in his shop the deficit stock without attracting the attention of anybody.

b) The claim against the Godown Keeper is the value of 85 bags and 87 seers of rice less value recovered by sale of 19 bags of broken rice and 9 bags of bran obtained after cleaning process viz.Rs.2305-12-0

c) No spets have so far been taken to obtain satisfaction of this claim because it is a claim which is disputed, and no steps can be taken unless there is a decree passed by any competent court.

d) In the criminal case the Godwn Keeper alleged that each bag had not been weighed or measured and that he had blindly signed the vouchers and there was the deterioration due to dampness in rainy season. The same grounds are

likely to be asserted in the suit.

e) Evidence both oral and documentary will be the same as was adduced in the Criminal trial.

f) It cannot be said what evidence the defendant will adduce in his defence.

g) The Financial circumstances of the defendant the Godwon Keeper are such as to render it likely that the satisfaction will be obtained by any decree passed by a Court.

Rule 108(2):- The vouchers are the main documents some of which are in English and some in Kannada. All are cyclostyled forms and they are simply receipts. Therefore translations have not been sent.

Rule 108(3):- The defendant is a Patel of village. He has got landed property and house. The particulars of his property situated in Analebail village of Siddaput Taluka are as below:-

Area.	Assessment.	Right	Kind of land.	
A. G. As.	Rs. As. Ps.			
8-38-0 *	121- 6- 0	Malki	Garden	* There is one building worth about Rs.1500/-. Besides this, he has got much property in three other villages viz. Umbalmane, Sarkuli and Affimurd.
1-33-0.	26- 0- 0	Mulgeni	"	
1-21-0.	3- 8- 0	Mulgeni	Tari	
6-20-0	21- 2- 0	Malki		

No steps to attach it can be taken unless a suit is filed and decree ob ained. Immediately after filing the suit a temporary injunction will have to be taken restraining the defendant from alienating his property. If this is done there is certainty of recovery not only of cost incurred by Government but also the suit claim. As to defence, the only defence that the defendant may adduce will be the judgment of Sessions Court as it is in his favour.

In this connection the District Government Pleader's opinion, a copy of which has been sent to you under this office letter of even No. dated 4-9-1952 may please be perused.

5

The case papers received in two filed along with the letter under reference, are sent herewith as desired by you.

Sd/-
for Collector of Kanara.

O.C.Signed
by the Collr.

Letter. 7 —

To

The Asst. Director of Civil Supplies,
(Districts), Bombay.

No. 139 Karwar, 9th Spetember, 1954.

Subject: Shortage of foodgrains in Herur godown.
Recovery of.

Reference: Civil Supplies Department No. UOR-776/II-C, dated 5th May 1954.

The information is as below:

i) From the counterfoils of the invoices, it is seen that each bag contained 128 seers of rice and there is no note to the contrary to show that the bags contained less. The Godwon Keeper has signed each invoice in token of receipt of the stocks. Hence this will be sufficient to prove that each bag contained 128 seers. According to the system prevailing then, each standard bag used to contain 128 seers i.e. 32 paylees of rice and this system prevailed throughout the district. All the invoices relating to the consignements in question are retained in this office.

ii) After physical verification of the stocks in the godown, a shortage of 48 bags and 2 seers was noticed. After cleaning the then existing stock of 367 bags and 62 seers, a further shortage of 37 bags and 85 seers was noticed. Hence the total shortage found in the stock was 85 bags and 87 seers. At the time of cleaning, 19 bags of broken rice and 9 bags of bran were collected. After deducting their sale proceeds, the net value to be recovered comes to Rs. 2,305-12-0.

A stock of 1,300 bags was in storage from 23-2-1945 to 18-10-1945. A godown loss to the extent of 1% may be allowed on this whole stock in view of the bad condition of the godown building. Cleaning loss of 1% may also be allowed on the stock of 367 bags and 62 seers that were in the godown before cleaning operation.

The records do not show that there was loss in transit on account of torn condition of 8 bags. Hence no deductions appear necessary on this account.

iii) The value of the total shortage of 85 bags and 87 seers at Rs. 32/- per gab of 128 seers : Rs. 2,741-12-0
Deduct value of broken rice and bran collected during cleaning operation and sold in public action : Rs. 436- 0-0

Rs. 2,305-12-0

Deduct value of 13 bags on account of 1% godown loss on the stock of 1,300 bags and value of 3 bags and 87 seers on account of 1% cleaning loss on the stock of 367 bags and 62 seers of rice Rs. 416- 0-0
: Rs. 117-12-0

Net shortage in rice is thus 69 bags, the value of which is : Rs. 1,772- 0-0

The Godwon Keeper is liable to make good the net loss to Government to the extent of Rs. 1,772/-.

iv) Notices were issued to the Ex-Godown Keeper on more than one occasion in different proceedings in this connection calling upon him to show cause as to why he should not

be held responsible for the loss, etc. But it appears that he was not called upon to pay the loss with interest thereon.

However, a fresh notice was issued to him, a copy of which is enclosed for your perusal. It was served on him on 11-8-1954.. But no reply is received yet even though the period of 7 days shown in the notice has already expired. Hence further steps may please be taken in the matter.

It is for the consideration of Government whether interest should be charged from the beginning or from the date of filing suit in the court.

The case papers were sent to you in two files tagged to-gether. But only one file has been received in this office and the same containing pages 1 to 140 is sent herewith.

O.C. signed by
the Collector.

Sd/-
for Collector of Kanara.

To

Shri Ganapa Bhatta Subba Bhatta,
Ex-Godown Keeper & Ex-Patel of Herur,
Herur, Taluka Siddapur,
N. Kanara.

9

By Reg. Post. A.D.

No. 139,
Office of the Collector of Kanara,
Karwar, 27th July, 1954.

Sir,

Notice is hereby given on behalf of the State of Bombay calling upon you to comply with demand made below:-

You had been appointed as Godown Keeper at Herur Godown when the levy system was introduced. You had been put in charge of three Government godowns located at Herur in or about 1944-45. The godown register maintained by you shows that you had received 1,300 bags of rice of 128 seers each between 23-2-1945 and 18-10-1945. You were to issue the stock to the Fair Price Shop on the permits issued to it. You were yourself the Chairman of this Fair Price Shop. It transpires that you son, a member of your undevided family, was helping you in running the shop. In July 1945, it was found that the stock had been mismanaged and that there were shortages. Hence the stock was actually measured. At the time of actual measurement, the stock shown in the stock register maintained by you ought to have been 415 bags and 64 seers of rice. But when actually measured it was found to be 367 bags and 62 seers. Therefore the shortage was 48 bags and 2 seers. After cleaning, a further shortage of 37 bags and 85 seers was noticed. Hence the total shortage found was 85 bags and 87 seers.

As Godown Keeper, you knew that each bag ought to contain 128 seers of rice. It was your duty to get the stocks properly weighted or measured if you had any doubt. For each consignment you had passed a receipt on invoice which mentioned that each bag contained 128 seers of rice. You acknowledged the receipt of the stocks as 'received in tact'. If there was a shortage, the contents in the bags would not have been in full and you could have pointed out shortages, if any, then and there.

Further you were yourself the Chairman of the Fair Price Shop and the shortages would have been noticed when the bags were taken to your Fair Price Shop for sale. But you never complained or reported about any shortage.

You are therefore hereby called upon to make the loss good within seven days of the receipt of this notice, as shown below with interest at 6% per annum. Failure to make the loss good within the stipulated time will result in taking due action against you for the recovery of the said amount.

Particulars.

Value of the total shortage of 85 bags and 87 seers of rice at Rs. 32/- per bag:	2,741-12-0
Deduct value of broken rice and bran collected during cleaning operation and disposed of:	436- 0-0
	2,305-12-0
Deduct value of 13 bags on account of 1% godown loss on the stock of 1, 300 bags and value of 3 bags and 87 seers being 1% cleaning loss on the stock of 367 bags and 62 seers of rice:	416- 0-0 117-12-0
Value of net shortage of 69 bags of rice:	1,772- 0-0 plus interest at the rate shown above.

Yours faithfully,

for Collector of Kanara.

No.947/1619/II-C,
Civil Supplies Department,
Bombay Castle, 11th February 1954.

To

The Collector of Kana..a,
Karwar.

Subject :- Shortage of food grains in Herur godowns.
Recovery of --

Reference :- Your letter no.139 dated 28th January 1954.

The matter is still under consideration and the case has been referred to Legal Department. Necessary orders will be issued in the matter in due course; the papers in question will also be returned at that time.

Sd/-
(C.K.Patel),
Asstt.Director of Civil Supplies
(Districts), Bombay.

DS

L.D.
13 FEB 1954

No.947/1619/II-C,
Civil Supplies Department,
Bombay Castle, 11th February 1954.

Copy forwarded to the Remembrancer of Legal Affairs, Bombay for information.

2. The main case has been referred to him under this Department Unofficial Reference No.947/21493/II-C dated 26th November 1953 Action thereon may please be expedited.

4616
17/2/54

Asstt.Director of Civil Supplies
(Districts), Bombay.

13

This is a proposed suit against Shri Ganappa Bhatta Subba Bhatta, ~~the~~ ex-godown keeper at Herur for recovering a sum of Rs.2305-12-0 being the price of 85 bags and 87 seers of rice found short in the said godown.

The facts of the case are detailed in the Collector's report dated 28-1-53 and C.S.D. note dated 4-8-52. It will be seen that no security bond was taken from Shri Ganappa Bhatta and that in the criminal case, he has been acquitted by the Appellate Court. In the C.S.D. notes dated 9-4-52 and 15-5-52 it was proposed to write off the amount of Rs.2305-12-0; the price of shortage. F.D. , however, did not agree. These papers have been forwarded to this office for sanctioning the institution of the suit against the Godown Keeper — It will be seen from the facts and judgment of the Sessions Court, that there is no evidence to prove that when the bags were given in the possession of the G.K. ~~they~~ each bag weighed 128 seers. Prior to giving him these bags, the G.K. were not weighed It does not appear that Govt. will be in a position to produce evidence other than that ~~was~~ produced, during the criminal prosecution. One of the important witnesses was one Shivaram, the clerk, ~~from~~ from the Siddapur Mamlatdar's office, who was in charge of dispatching the bags of rice from Siddapur ~~to~~ to Herur godown. He admitted that the bags were never weighed at the time of delivery to the G.K. It will be therefore hard to establish that ~~the~~ each bag contained 128 seers of rice before it was delivered to the G.K. Moreover 24 of these bags were lying in the open varandah of a temple at Sarkuli for 22 days before they were delivered to the ~~the~~ G.K. There was thus likelihood of the bags being tampered with by persons other than the G.K. The bags were also affected by the bad storage condition of the temple verandah. Moreover some 8 bags

were admittedly torn during the transit. The Godown keeper had also complained about loss caused by monsoon and rats. No allowance seems to have been made for loss by normal deterioration. Before the question of instituting a suit can be decided it will be necessary to consider the following points:-

(1) Whether there is sufficient evidence to prove that each bag contained 128 seers of rice before the stock was handed over to the G.K.

(2) What deductions are to be made from the claim, on account of the torn condition of 8 bags in transit, the bad storage condition at the temple, the normal deterioration etc.

(3) What is the net quantity of shortage in rice with its price for which the ex-G.K. is to be held liable.

(4). Whether a notice has been served on the ex- G.K. calling upon him to pay the amount and whether interest has been demanded from him on the said amount by way of damages. If this is not done it should be done now before the question of instituting a suit against him is considered.

The C.S.O. may be requested to supply the information - A

PMC 20/4/54

Sold (ML) 23/4

OFFICE OF THE R. L. A.

The facts of the case are detailed in the Collector's report dated 28-1-1953 and C.S.D. note dated 4-8-1952. It will be seen that no security bond was taken from Shri. Ganappa Bhatta and that in the criminal case, he has been acquitted by the Appellate Court. In the C.S.D. notes dated 9-4-1952 and 15-5-1952 it was proposed to write off the amount of Rs.2305-12-0 the price of shortage. F.D., however, did not agree. These papers have been forwarded to this office for sanctioning the institution of the suit against the Godown Keeper. It will be seen from the facts and judgment of the Sessions Court, that there is no evidence to prove that when the bags were given in the possession of the G.K. each bag weighed 128 seers. Prior to giving him these bags they were not weighed. It does not appear that Govt. will be in a position to produce evidence other than that produced, during the criminal prosecution. One of the important witnesses was one Shivaram, the clerk, from the Siddapur Mamlatdar's office, who was in charge of dispatching the bags of rice from Siddapur to Herur godown. He admitted that the bags were never weighed at the time of delivery to the G.K. It will be therefore hard to establish th t each bag contained 128 seers of rice before it was delivered to the G.K. Moreover 240 of these bags were lying in the open varandah of a temple at Sarkuli for 22 days before they were delivered to the G.K. There was thus likelihood of the bags being tampered with by persons other than the G.K. The bags were also affected by the bad storage condition of the temple verandah. Moreover some 8 bags were admittedly torn during the transit The Godown Keeper had also complained about loss caused by monsoon and rats. No allowance seems to have been made for loss by normal deterioration. Before the question of instituting a suit can be decided it will be necessary to consider the following points:-

points:-

(1) Whether there is sufficient evidence to prove that each bag contained 128 seers of rice before the stock was handed over to the G.K.

(2) What deductions are to be made from the claim, on account of the torn condition of 8 bags in transit, the bad storage condition at the temple, the normal deterioration etc.

(3) What is the net quantity of shortage in ride with its price for which the ex-G.K. is to be held liable.

(4) Whether a notice has been served on the ex-G.K. calling upon him to pay the amount and whether interest has been demanded from him on the said amount by way of damages. If this is not done it should be done now before the question of instituting a suit against him is considered.

The C.S.D. is requested to supply the above information.

for Remembrancer of Legal Affairs.

U.O.R. to C.S.D.No. 10299 /E, dated the 21st April, '54.

With papers in 3 files

file Rangam Miscell. Suit 1964

7/6/54 · SS

No.LA/LC/1098

Office of the Director of Civil Supplies (Accounts)
New India Building, Fort, Bombay, Dt. ~~29th March 1955~~ 25th April 1955

To

The Solicitor to Government,
Legal Department, Secretariat,
Bombay.

Sir,

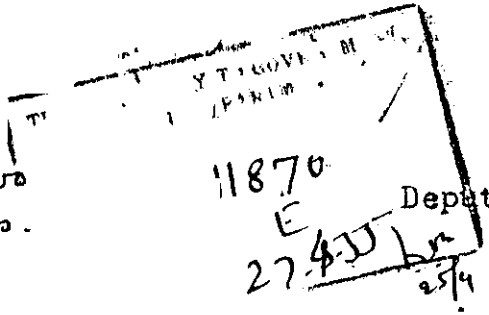
I have the honour to forward herewith the papers in the marginally noted case along with draft instructions for preparing the plaint in the proposed suit. Sanction may be accorded to the institution of the suit accordingly.

Proposed suit by the State of Bombay, a gainst Shri Ganapabhatta Subbabhatta of Hebur in Kanara District.

Yours faithfully,

(S.R.Kaprekar)
Deputy Director of Civil Supplies (Legal)

with two files.



Legal Department.

This is a proposal to file a suit on behalf of the State of Bombay against Shri Ganapa Bhatta Subha Bhatta, Ex-Godown Keeper at Herur in the Kanara District for recovery of Rs.1772-0-0.

2. The institution of a suit against Shri Ganapa Bhatta Subbabhatta may be sanctioned on the lines of the accompanying Memorandum of Instructions.

2/5

9437/E dt 6/5/55

Sol (Mr.) Cl 3-

*

with one f-c

Secy A & FD

7.5.55

RECEIVED in A. & F. D. on 7/5/55

No. 2870/E-21

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 16th May 1955.

Subject:- Institution of a suit against Shri. Ganapabhatta Subbabhatta, Ex-Godown Keeper of Herur, for recovery of Rs.1772-0-0.

Memorandum.

With reference to the subject noted above, the District Government Pleader, Kanara at Karwar is informed that institution of a suit against Shri. Ganapabhatta Subbabhatta, Ex-Godown Keeper at Herur in the Kanara District for recovery of Rs.1772-0-0 with future interest and costs of the suit is sanctioned and he is requested to take the necessary steps in accordance with the accompanying Memorandum of Instructions, a copy of which is sent herewith in advance. He should send the draft plaint for approval.

Papers of the case in Files two received from Collector accompany.

for Remembrancer of Legal Affairs.

To

The District Government Pleader, Kanara, Karwar.

srs/10.5.

Copy to:-

The Collector of Kanara.

Subdl. for sign.
12/5
9.5.

Legal Department.

The Institution of suit against Shri Ganapabhatta Subbabhatta, Ex-Godown Keeper of Herur, for recovery of Rs. 1772-0-0 has been sanctioned and the District Government Pleader, Kanara has been instructed to file the suit under this office Memo. No. 9870/E, dated 11-5-1955.

These papers are now no longer required by this Department and may be returned to (C.S.D.) A. & F.D.

16/5

Sd/-

Solicitor(M.L.) Sd/- SE MMN.

U.O.R. to A. & F.D.No. 10495/E dated 19/5/55

Abs. 16 146.

25

From:

The District Government Pleader,Kanara,Karwar.

To

The Remembrancer of Legal Affairs, Bombay.

No. 572 of 1955. Karwar, dated 29-6-1955.

Subject: Institution of a suit against Ganpa Bhatta, Subba Bhatta, Ex-Godown-Keeper of Herur of recovery of ~~Rx177~~ Rs.1772/-

Sir,

As desired by your letter No.9870/E dated 11th May 1955 I have drafted the plaint copy of which has been sent herewith. The same may be returned to me after making necessary changes.

ORY LEGAL 18950 E 27-55

I may be permitted to draw Rs.200/- as advance to cover the court-fees as also process etc., ~~The Treasury Officer~~

I had myself conducted the criminal appeal in which the defendant was acquitted. My recommendation to file an appeal against the order of acquittal had not been accepted. One of the grounds of acquittal was that the Circle Inspector Ex.2 and clerk Ex.4 had admitted that the bags containing rice had never been actually measured at the time of delivery to the defendant (vide paras 10 and 11 of the judgment). Similarly the Supply Assistant also said that there were complaints of shortage in Sirsi stock, (vide para 12). Then again 240 bags were lying at Sarkuli temple in an open space for over a month. The Supply Assistant had therefore recommended 10% deduction. These are the points which will have to be got over, as the defence will be on these very lines. I may therefore please be enlightened after considering these paras. The copy of the judgment has therefore been sent herewith, which may please be returned after perusal.

Yours faithfully,

Dist.Govt.Pl.Kanara.

2 JUL 1955

Submitted

2) The DAP Kasaragod has forwarded a copy of the plaint in Civil Suit against Ramappa Bhatta Subba Bhatta for scrutiny. The Instructions in this suit have prepared by Dy Dir (LS (Legal). This may be marked to the member for scrutiny

T Q
4/7

To hon'ble Shri Chithran
Nair
8

Submitted

The D.G.P. Kasaragod has forwarded a copy plaint for scrutiny. The draft affidavit is the lines of the Instructions and may be approved memo 4/7
In additions suggested may also be approved.
The Copy of the judgement may also be returned to him as desired.

UR
11/7
Approved subject to amended
SOL(ML) Nair
14.7

27 27

Draft Plaint.

In the Court of the Civil Judge, Senior Division, Karwar.

Civil Suit No. of

The State of Bombay ....Plaintiff.

Vs.

Ganapabhatta Subbabhatta, age 66, agriculturist, residing at Analebail in Nelemanv taluka Siddapur.

.. Defendant.

Claim: Rs.

The plaintiff's case is as follows:

1. The defendant was a patel of Herur. In additio to his duties as a Patel he was appointed as a Godown-Keeper and an amount of Rs.200/- was sanctioned to him as remuneration inrespect of the work done by him as a Godown-Keeper Thus he was a public servant. He was in charge of 3 Government godowns in Heroor. His duties among others were to take care of the foodstufs received by him as such godown-keeper, to maintain correct accounts of the stock of food-grains that was in his charge and to act as per instructions of the mamlatdar of Siddapur or of anyother higher officers. He was also bound to account for all the stocks entrusted to him.

2. Godown register maintained by him was inspected in October 1945. It showed that he had received 1300 bags of rice of high quality between 23-2-1945 and 18-10-1945. The bags were of standard size and each bag contained 128 seers of rice. The godown-keeper passed receipts on the invoices which clearly mentioned that each bag contained 128 seers. He received the consignments and acknowledged them as "received in tact".

3. As godown-keeper he issued stock on permits from time to time to the Fair Price Shops of which he was also a Chairman. His son helped him in running the Fair Price Shop. In July 1945 it was found that the stock had been mismanaged. Hence the stock was actually checked on 18-10-1945. At the time of actual checking, the stock as

per the Stock Register ought to have been 415 bags and 64 seers. But when actually checked it was found to be 367 bags and 62 seers..There was thus a shortage of 48 bags and 2 seers. Generally 1 % godown loss is normal. At this rate there should have been a shortage of 13 bags only. But the actual shortage found was of 48 bags and 2 seers. The godown-keeper did not satisfactorily account for this abnormal shortage and therefore he (the defendant) is liable for this shortage as follows :-

	Rs. as. ps.
Value of the shortage of 48 bags and 2 Srs. at Rs.32 per bag of 128 Srs.	1536-8-0.
Less value of 13 bags on account of 1 % Godown loss on the stock of 1300 bags of rice.	416-0-0.
Net loss on shortage :-	Rs. 1120-8-0.

4. The stock of 367 bags and 62 seers of rice in the godown was found to be unclean and deteriorated and so it was got cleaned. After cleaning, a further improper shortage of 37 bags and 85 seers was noticed. Generally 1 % cleaning loss is normal. At this rate there should have been cleaning of loss of 3 bags and 87 seers. But the actual cleaning loss found was 37 bags and 85 seers. For this abnormal loss the defendant as godown-keeper had no satisfactory explanation. As a godown-keeper it was his duty to take proper care of the food grains entrusted to him and it was for him to take necessary steps to prevent the rice from deterioration on account of dampness, weevils and other causes in proper time.But he had failed to inform the authorities concerned from time to time about the deteriorating condition of rice .The mamlatdar would have taken necessary steps by taking special measures to protect the foodgrains or to get them cleaned immediately or to transport them to some better godown if the defendant had reported the condition from time to time. Thus Government would have been saved from the abnormal loss if the defendant had not acted negligently. The godown-keeper (defendant) is solely responsible for this abnormal cleaning loss on account of his negligence in failing to take proper care of the foodgrains entrusted to him

29 94

in proper time. The net cleaning loss suffered by the plaintiff is as follows:-

	Rs. as. ps.
Value of 37 bags and 85 Srs. found short on cleaning.	1205-4-0.
Less value of broken rice and bran collected during cleaning operation and sold by auction.	436 - 0-0.
Less value of 3 bags and 87 seers on account of 1 % cleaning loss permissible on the stock of 367 bags and 62 Srs. of rice.	117-12-0.
Net loss on cleaning ...	Rs. 651 -8-0.

6. The defendant was prosecuted along with his son and the Assistant Godown-Keeper for criminal misappropriation under section 406 I.P.C. read with section 34 and for breach of rule 81(4) of the Defence of India Rules read with section 7 of India Act 29 of 1946 inrespect of the shortage of 48 bags mentioned above. The Assistant Godown-Keeper was also one of the accused. The defendant and the Assistant Godown-Keeper were convicted by the magistrate. But the appellate Court acquitted both of them.

7. In the criminal trial the prosecution had to prove not mere negligence on the part of the defendant but it had to prove criminal negligence amounting to dishonest intention and of misappropriation. But the defendant being a public servant who was bound to take proper care and caution in the discharge of his duties as a Godown-Keeper is liable to make good the loss caused to the plaintiff eventhough his negligence did not amount to criminal negligence, dishonesty or criminal misappropriation. Hence this suit has been filed for the recovery of the actual loss caused to the Government entirely due to the negligence ~~of the defendant,~~ fraud or dishonesty of the defendant.

8. After allowing normal 1% godown loss and 1 % cleaning loss the plaintiff had been put to a

total loss of Rs.1120-8-0 plus Rs.651-8-0 = Rs.1772-0-0.

9. Eventhough a notice was issued to the defendant to pay up this amount he has failed to do so. Hence this suit has been filed. Cause of action for this suit arose in October 1945 when the shortage was detected.

10. The cause of action has arisen at Heroor within the jurisdiction of this Court. Hence this court has got jurisdiction to try this suit.

11. The plaintiff therefore prays for a decree against the defendant for the following amount with costs and future interest.

(a) Net loss suffered by the plaintiff as stated in para 3 of the plaint being the value of the shortage of 48 bags and 2 seers at Rs.32/- per bag of 128 seers equal to Rs.1536 -8-0.
less of 13 bags on account of 1 % godown loss on the stock of 1300 bags of rice at Rs.32/- per bag equal to Rs. 416-0-0.

Net loss on shortage Rs.1120-8-0.

(b) Value of 13 bags and 85 seers found short on cleaning at Rs.32/- per bag comes to Rs.1205-4-0.

less of value broken rice and bran collected during the cleaning operation and sold by auction 436-0-0.

less value of 3 bags and 87 seers on account 1 % cleaning loss permissible on the stock of 367 bags and 62 seers of rice at above rate -..... 117-12-0.

Net loss on cleaning as claimed in plaint para 5 .. Rs. 651 - 8-0.

Total claim : Rs. 1772 - 0 - 0.

No. 15410/E

Office of the
Remembrancer of Legal Affairs,
Sachivalaya, Bombay, 18th July 1955.

Subject:- Institution of suit against Shri Ganpabhatta Subabhatta Ex-Godown keeper of Herur for recovery of Rs. 1772.

MEMORANDUM.

With reference to his letter No. 572, dated the 29th June 1955 on the above subject forwarding a draft plaint for approval, the District Government Pleader, Kanara, Karwar is informed that the draft forwarded by him is approved subject to the following amendments

(i) In line 19 of para 4 of the plaint for the word "accused" the word "defendant" should be substituted;

(ii) In last line of para 7 of the plaint the words "of the defendant" where they occur for the first time should be deleted.

As desired, copy of the Judgment in Criminal Appeal No. 36 of 1947 is returned herewith.

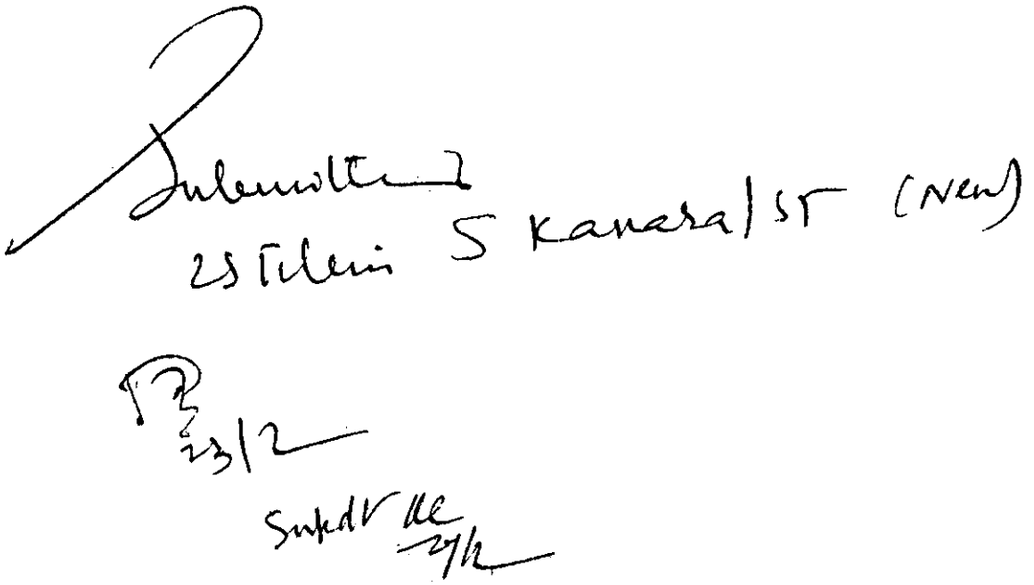
The copy of the Plaint is retained for the of this office.

for Remembrancer of Legal Affairs.

To

The District Government Pleader,
Kanara, Karwar.

16.7.



Suits :

Kanara.

For recovery of Rs. 1,772-0-0 from Shri Ganapa Bhatta Subba Bhatta.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 19028/E.

Sachivalaya, Bombay, 26th August 1955.

Letter from the Collector of Kanara—Forwarding papers and requesting sanction to the Institution of a suit against Shri Ganapa Bhatta Subba Bhatta, ex-Godown Keeper, at Herur, for recovery of Rs. 1,772-0-0.

Memorandum to the District Government Pleader, Kanara, Karwar, No. 9870/E, dated the 11th May 1955—Forwarding a copy of the Memorandum of Instructions in advance.

RESOLUTION.—Sanction is accorded to the Institution of a suit against Shri Ganapa Bhatta Subba Bhatta, for recovery of Rs. 1,772-0-0 with interest and costs.

By order and in the name of the Governor of Bombay,

Submitted for signature

J. R. DHURANDHAR,
Secretary to Government.

L-B Leg. 330

[P.T.O.

To

*The Agriculture and Forests Department,
*The Collector of Kanara,
The District Government Pleader, Kanara, Karwar (with two copies of Memorandum of Instructions).

*With a copy of Memorandum of Instructions.

No. of 1955.

Copy forwarded for information and guidance to

Memorandum of Instructions.

This is a proposal to file a suit on behalf of the State of Bombay against Shri Ganapa Bhatta Subba Bhatta, Ex-Godown Keeper, at Herur in the Kanara District for recovery of Rs. 1,772-0-0. The facts and circumstances leading to the suit are as follows :—

2. Shri Ganapabhatta Subbabhatta was a Patel of Herur. In addition to his own duties as a Patel he was appointed as Godown Keeper and an amount of Rs. 200 was sanctioned to him as remuneration in respect of the work done by him as Godown Keeper. Thus he was a public servant within the memaning of section 21(8) of the Indian Penal Code. He was in charge of three Governent Godowns in Herur. His duties among others were to take care of the food staff received to maintain correct accounts of the stock that was in his charge and to act as per instructions of the Mamlatdar or any other higher officers. He was also bound to account for all stocks entrusted to him.

3. The Godown Register maintained by him was inspected in October 1946. It showed that he had received 1,300 bags of rice of high quality between 23rd February 1945 and 18th October 1945. The bags were of standard size and each bag contained 128 seers of rice. The Godown Keeper passed receipts on invoices which clearly mentioned that each bag contained 128 seers. He received the consignments and acknowledged them as "Received intact".

4. As Godown Keeper he issued stock on permits from time to time to the Fair Price Shop of which he was also a Chairman. His son helped him in running the Fair Price Shop. In July 1945 it was found that the stock had been mismanaged. Hence the stock was actually checked on 18th October 1945. At the time of actual checking the stock as per stock register ought to have been 415 bags and 64 seers. But when actually checked it was found to be 367 bags and 62 seers. There was thus a shortage of 48 bags and 2 seers. Generally 1 per cent. Godown loss is normal. At this rate there should have been a shortage of 13 bags only. But the actual shortage found, was of 48 bags and 2 seers. The Godown Keeper could not satisfactorily account for this abnormal shortage and therefore he is liable for this shortage as follows :—

	Rs.	a.	p.
Value of the shortage of 48 bags and 2 Seers at Rs. 32 per bag of 128 Seers. ..	1,536	8	0
Less value of 13 bags on account of 1 per cent. Godown loss on the stock of 1,300 bags of rice.	416	0	0
Net loss on shortage :—	1,120	0	0

The stock of 367 bags and 62 Seers of rice in the godown was found to be unclean and deteriorated and so it was got cleaned. After cleaning, a further improper shortage of 37 bags and 85 Seers was noticed. Generally 1 per cent. cleaning loss is normal. At this rate there should have been a cleaning loss of 3 bags and 87 Seers. But the actual cleaning loss found was of 37 bags and 85 Seers. For this abnormal loss the Godown Keeper had no satisfactory explanation. As a Godown Keeper it was his duty

to take proper care of the foodgrains and to take steps to prevent the rice from deterioration on account of dampness, weevils and other causes. Had he informed the Mamlatdar from time to time about the deteriorating condition of rice, the Mamlatdar could have taken steps to take special measures to protect the foodgrains or to get them cleaned immediately or to transport them to some better godown and thus Government would have been saved from the abnormal loss. The Godown Keeper is solely responsible for this abnormal cleaning loss on account of his negligence in failing to take proper care of the foodgrains. The net cleaning loss suffered by Government is as follows :—

	Rs.	a.	p.
Value of 37 bags and 85 Seers found short on cleaning. ..	1,205	4	0
Less value of broken rice and bran collected during cleaning operation and sold by auction.	436	0	0
Less value of 3 bags and 87 Seers on account of 1 per cent. cleaning loss permissible on the stock of 367 bags and 62 Seers of rice. ..	117	12	0
Net loss on cleaning ..	651	8	0

5. The Godown Keeper was prosecuted along with his son and the Assistant Godown Keeper under section 400, Indian Penal Code, read with section 34 and breach of Rule 81(4) of the Defence of India Rules read with section 7 of Act XXIX of 1946 in respect of the shortage of 48 bags. The Godown Keeper and the Assistant Godown Keeper were convicted by the Magistrate ; but the Appellate Court acquitted both of them.

6. Evidence in this Civil Suit will be similar as in the Criminal case. However, in this Civil Suit the question will be whether the loss caused to Government was due to the negligence of the Godown Keeper. Being a public servant he was bound to take proper care and caution in the discharge of his duties as a Godown Keeper.

7. After allowing normal 1 per cent Godown loss and 1 per cent. cleaning loss, Government had been put to a total loss of Rs. 1,772-0-0. This loss is entirely due to the negligence, fraud or dishonesty of the Godown Keeper. Even though a notice was issued to him to pay up this amount, he has failed to do so and therefore it is necessary to file a suit against him.

8. The District Government Pleader, should file a suit against Shri Ganapabhatta Subbabhatta in the Court of the Civil Judge, Senior Division, Karwar, for a recovery of Rs. 1,772-0-0 with future interest and cost of the suit. The cause of action should be stated to have arisen when the shortage of rice was found on account of the defendant's negligence in October 1945. A draft of the plaint may be submitted to Legal Department within a week.